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Torts

Torts; punitive damages for wrongful death

Civil Code §3294 (amended).

AB 444 (Clute); 1983 STAT. Ch 408

Support: Attorney General; Crime Victim Restitution Package

Opposition: State Farm Insurance Company

Since 1874, California plaintiffs have been burdened with the anomaly that punitive damages¹ can be awarded to the representative of a decedent's estate in an action under a survival statute,² but not to a plaintiff in a wrongful death action.³ Chapter 408 expands the ability of survivors of homicide victims to obtain punitive damages from convicted criminals.⁴ Punitive damages are now recoverable in a wrongful death action when the death resulted from a homicide for which the defendant has been convicted of a felony.⁵ Punitive damages, therefore, are available whether the decedent died instantly, or survived the fatal injury for a period of time.⁶ Finally, Chapter 408 provides that joinder⁷ and consolidation⁸ will be used to avoid multiple recoveries of punitive damages for the same wrongful act.⁹

1. CAL. CIV. CODE §3294 (definition of exemplary or punitive damages); *see also* *Neal v. Farmers Insurance Exchange*, 21 Cal. 3d 910, 928, 582 P.2d 980, 990, 148 Cal. Rptr. 389, 399 (1978) (listing the factors considered in determining whether, and in what amount, punitive damages should be awarded).

2. *See* CAL. PROB. CODE §573.

3. *See* 1874 Cal. Stat. c. 383, §40, at 294 (amending CAL. CIV. PROC. CODE §377); *Lange v. Schoettler*, 115 Cal. 388, 391, 47 P. 139, 139 (1896) (stating that the purpose of the 1874 amendment to CAL. CIV. PROC. CODE §377 was to take away the right to exemplary damages in wrongful death actions); *see also* *Pease v. Beech Aircraft Corp.*, 38 Cal. App. 3d 450, 461, 113 Cal. Rptr. 416, 423 (1974). This differentiation was held not to violate the equal protection clause of the California Constitution, as the plaintiffs in a wrongful death action assert a statutory right to recover on their own behalf for harm which was done to another. *Ford Motor Co. v. Superior Ct. of State of California*, 120 Cal. App. 3d 748, 751, 175 Cal. Rptr. 39, 41 (1981). *See generally* *McClelland & Truett, Survival of Punitive Damages in Wrongful Death Cases*, 8 U.S.F.L. REV. 585 (1974).

4. *Compare* CAL. CIV. CODE §3294 with 1982 Cal. Stat. c. 174, §1, at 816 (amending CAL. CIV. CODE §3294). *SEE RECOMMENDATION AND STUDY RELATING TO SURVIVAL ACTIONS*, 3 CAL. L. REV. COMM'N REPORTS F-6 (1961).

5. CAL. CIV. CODE §3294(d).

6. *Id.*

7. CAL. CIV. PROC. CODE §427.10 (definition of joinder).

8. *Id.* §104 (definition of consolidation).

9. CAL. CIV. CODE §3294(d); *see* CAL. CIV. PROC. CODE §377 (procedures for use of joinder and consolidation). Chapter 408 is part of the Crime Victim Restitution Program of 1983. 1983 Cal. Stat. c. 408, §2, at ____ (amending CAL. CIV. CODE §3294).

Torts; firearms and ammunition

Civil Code §1714.4 (new).

AB 75 (McAlister); 1983 STAT. Ch 1299

Support: California Rifle and Pistol Association; National Rifle Association

Opposition: California Trial Lawyers Association

Existing law imposes tort liability for willful acts and injuries caused by want of ordinary care or skill.¹ The application of proximate cause, however, is limited in specified situations.² Chapter 1299 specifically addresses proximate cause in products liability actions involving firearms and ammunition.³

The California Supreme Court, in *Barker v. Lull Engineering Co.*,⁴ formulated a two-pronged test to determine whether a product design is defective,⁵ creating strict liability for the suppliers of the product.⁶ Under *Barker*, a product is defective in design if the plaintiff (1) establishes that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, or (2) demonstrates that the design of the product proximately caused the plaintiff's injury, and the defendant fails to establish that the benefits of the design outweigh the risks inherent in that same design.⁷

Chapter 1299 limits the application of the *Barker* test in cases involving firearms and ammunition.⁸ Specifically, Chapter 1299 provides that firearms or ammunition cannot be deemed defective in design based on the contention that the benefits of the products do not outweigh the risks of injury that the products create.⁹ In addition, a firearm or ammunition is not made defective in design by the possibility of serious injury, damage, or death resulting upon discharge.¹⁰

Pursuant to Chapter 1299, injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by the po-

1. CAL. CIV. CODE §1714(a).

2. *Id.* §1714(b),(c). For example, furnishing alcoholic beverages by a social host to an intoxicated person is not the proximate cause of injuries resulting from intoxication. *Id.*

3. *See id.* §1714.4.

4. 20 Cal. 3d 413, 573 P.2d 443, 143 Cal. Rptr. 225 (1978).

5. *See id.* at 432, 573 P.2d at 455, 143 Cal. Rptr. at 237.

6. *See id.*

7. *Id.*

8. *See* CAL. CIV. CODE §1714.4; *see also* 20 Cal. 3d at 432, 573 P.2d at 455, 143 Cal. Rptr. at 237 (to compare the language of *Barker* with the legislative language).

9. CAL. CIV. CODE §1714.4(a).

10. *Id.* §1714.4(b)(1).

tential of the product to cause serious injury, damage, or death.¹¹ Damages resulting from the *actual* discharge of a firearm or ammunition, however, are proximately caused.¹² Finally, these provisions do not affect a product liability cause of action based upon the improper selection of design alternatives.¹³

11. *Id.* §1714.4(b)(2).

12. *Id.*

13. *Id.* §1714.4(c).

Torts; immunity from defamation for anonymous witness programs

Civil Code §48.9 (new).

SB 331 (Presley); 1983 STAT. Ch 495

Support: Associated General Contractors of California; Attorney General; Construction Industry Crime Prevention Program

Existing law allows a person falsely accused of a crime to sue for slander¹ or libel.² Defendants in these actions, however, are immune from liability if the accusations were made in a judicial proceeding or any other official proceeding authorized by law.³ Chapter 495 grants a similar immunity to organizations sponsoring or conducting an anonymous witness program.⁴ These organizations and their employees are not liable for damages resulting from the receipt of information of possible criminal activity or the dissemination of that information to a law enforcement agency.⁵ This protection applies to actions commenced by the person accused of the wrongdoing, or by an informant who suffered retaliatory damages as a result of supplying the information.⁶ The organizations are not shielded from liability, however, when (1) the organization dissemi-

1. CAL. CIV. CODE §46 (definition of slander); *see, e.g.*, *Kelly v. General Telephone Co.*, 136 Cal. App. 3d 278, 285, 186 Cal. Rptr. 184, 187(1982) (accusation of forgery was slander per se).

2. CAL. CIV. CODE §§45, 45a (definition of libel). "It is well settled that if alleged defamatory words are reasonably calculated to induce readers thereof to believe that a person is guilty of a criminal offense and the words are false, they are sufficient to support an action for libel." *Gallagher v. Chavalas*, 48 Cal. App. 2d 52, 59, 119 P.2d 408, 412 (1941).

3. *See* CAL. CIV. CODE §47(2). "[A] communication concerning possible wrongdoing, made to an official government agency such as a local police department, and which communication is designed to prompt action by that entity, is as much a part of an 'official proceeding' as a communication made after an official investigation has commenced." *Williams v. Taylor*, 129 Cal. App. 3d 745, 753, 181 Cal. Rptr. 423, 427-28 (1982).

4. *See* CAL. CIV. CODE §48.9(d) (definition of anonymous witness program).

5. *Id.* §48.9(a).

6. *Id.* §48.9(b).

nated the information knowing it was false,⁷ (2) an informant's name was disseminated without the informant's authorization and the dissemination was not required by law,⁸ or (3) the organization obtained the informant's name, but did not tell the informant that disclosure of the informant's name may be required by law.⁹

7. *Id.* §48.9(c)(1).

8. *Id.* §48.9(c)(2).

9. *Id.* §48.9(c)(3).

Torts; vandalism

Civil Code §1721 (new).

SB 561 (Robbins); 1983 STAT. Ch 474.

Support: California Associated Builders and Contractors; California Peace Officers Association; Peace Officers Research Association of California

An interference with another's real or personal property¹ (hereinafter referred to as property) is actionable in the civil courts as conversion² or trespass.³ A successful plaintiff in a conversion action may recover the full value of the property.⁴ If the suit is one for trespass, however, the amount of recoverable damages may equal only the actual damage suffered.⁵ Additionally, the malicious destruction of property is criminally punishable as vandalism.⁶ Upon a conviction for vandalism, the defendant is guilty of a misdemeanor if the damage is under \$1,000,⁷ or a felony-misdemeanor if the damage is equal to or exceeds \$1,000.⁸

Chapter 474 increases the amount of damages recoverable when specific types of property are destroyed.⁹ In a civil action for intentional and malicious destruction of property at a site where substantial improve-

1. See W. L. PROSSER, THE LAW OF TORTS 63-97 (4th Ed.) (discussion of intentional interference with property). The definition of interference includes the destruction or alteration of another's property. *Id.* at 91-92.

2. See PROSSER, *supra* note 1, at 80-81; *Igaue v. Howard* 114 Cal. App. 2d 122, 126, 249 P.2d 558, 561 (1952); *Miller v. Rau*, 216 Cal. App. 2d 68, 75, 30 Cal. Rptr. 612, 616 (1963) (definition of conversion).

3. See PROSSER, *supra* note 1, at 28; *Brenner v. Haley*, 185 Cal. App. 2d 183, 187, 8 Cal. Rptr. 224, 227 (1960) (definition of trespass); see also PROSSER, *supra* note 1, at 63-79 (discussion of what constitutes trespass).

4. CAL. CIV. CODE §3336.

5. See PROSSER, *supra* note 1, at 67; *Herzog v. Grosso*, 41 Cal. 2d 219, 225, 259 P.2d 429, 433-34 (1953).

6. CAL. PENAL CODE §594(a).

7. *Id.* §594(b)(2).

8. *Id.* §594(b)(1) 1203.4(a), (b)(1), (b)(2), (b)(3).

9. Compare *id.* §594 with CAL. CIV. CODE §1721.

ments are under construction, a successful plaintiff may be entitled to damages equal to three times the amount of actual damages suffered, and reasonable attorney's fees.¹⁰ The amount of damages awarded is discretionary with the court.¹¹

10. CAL. CIV. CODE §1721.

11. *Id.*

